

TIPS FOR ATTORNEYS regarding CATASTROPHIC DESIGNATIONS

Tips for Claimant Attorneys:

1. Social Security disability award is not always necessary, even for “window” cases (7/1/92 through 6/30/95). In all cases, we must have a recent opinion from the authorized treating physician specifically addressing the employee’s ability to work. If you have a Social Security disability decision written by a S.S.A. judge, do submit it. Do not submit award notifications simply informing the employee when and how much money s/he will receive. Always submit the findings giving the rationale, if the employee was not approved at the initial level. If no rationale because employee was approved at early level, submit a copy of Form 831, Transmittal Form, if you have it; it lists primary and secondary diagnoses on which disability award was based.
2. **For all cases in which the request for catastrophic designation is based on §34-9-200.1(g) 6, the Board does require a recent (at least within the past year, and preferably within the last six months) written statement or checklist from the authorized treating physician giving the physician’s opinion of the injured worker’s ability to work. This is required even if the employee is receiving Social Security disability benefits.****
3. If the physician feels the employee can work, need *specific restrictions* (for example, how many hours can the employee sit, stand, and walk? How many pounds can s/he lift/carry? Are there any limitations regarding hand use (fine and gross manipulation), bending, driving, foot controls, vision restrictions, etc.?)**
4. If the employee has *other medical conditions* in addition to his/her work-related injury and residuals from that injury, *have the treating physician clarify in writing whether the injured worker’s current restrictions/inability to work are a result of the work-related injury and its residuals*, or not.**
5. The Board does require for all requests based on §34-9-200.1(g) (6) information regarding the injured worker’s *education level and work history*, including physical requirements of all jobs held within the last 15 years.
6. It is very difficult for an individual less than 50 years old, with a high school education and a release to a full range of sedentary work to qualify either for SSDI or for catastrophic designation. Is the person actually illiterate? Submit documentation that the employee attended specific special education classes in school, if applicable. Does the employee have a tested IQ below 70? Are there *specific restrictions which reduce the person to less than a full range of sedentary work?***
7. *Multiple finger and/or toe amputations may equate to amputation*, if the employee has lost the effective use of his/her hand or foot. Photographs and/or diagrams may be helpful to identify actual losses.
8. A *neuropsychological evaluation* is almost always *needed to document that an employee’s brain injury is severe enough to meet the definition of a catastrophic injury.***
9. **Form WC-R1CATEE** went into effect in July of 2002; this is a dedicated form used solely by employees and their attorneys to request catastrophic designation.
10. ***Less is more:*** Do not send the Board reams of old medical records, handwritten physical therapy notes, nurses’ notes, anesthesia records, etc. – reading those just holds up our decisions. You can usually submit the needed information in ***10 pages or less***. A brief letter outlining the history and argument is extremely helpful.

****YOU MUST TAB/LABEL MEDICAL EXHIBITS**

Tips for Defense Attorneys:

1. Has the employee experienced a *change of condition for the better since the last work release*?
2. If the employer asserts that it will take the employee back and will provide a job within the employee's restrictions, *submit an approved job description signed by the authorized treating physician*.
3. Is there a recent Functional Capacity Evaluation (F.C.E.) *which documents a greater exertional level than that which was last recommended*?
4. Does the employee have *medical conditions not related to his/her injury which would disable him/her even if the employee had not incurred the work injury*?
5. Was the Social Security *disability award based on more than just the employee's work injury* and its residuals?
6. Is there an Independent Medical Evaluation (I.M.E.) *opinion which varies substantially from the ATP (Authorized Treating Physician)'s opinion*?
7. Is all *objective testing negative*?
8. *Receipt of Social Security disability benefits does not automatically entitle an injured worker to catastrophic designation; Barker case said receipt of such benefits creates "at most a rebuttable presumption."* Many SSDI decisions are issued long before the employee's request for catastrophic designation of his/her injury; review case to determine if employee's condition has improved since the SSDI award.
9. The *most recent work release from the ATP (Authorized Treating Physician) will be given the most weight*, even if the ATP has previously issued less restrictive releases.
10. An injured worker does *not* have to be *permanently and totally disabled to qualify for catastrophic* designation; work history, age, education level, and transferability of skills are considered if the employee is released to work with restrictions.
11. *Do not submit surveillance videotapes.* If you have such a tape of an injured worker and feel it demonstrates greater physical ability than has previously been documented, get the tape to the authorized treating physician and request the doctor's opinion of the employee's current work abilities and restrictions. Then, submit that medical opinion, in written form.
12. Once the Rehabilitation Division issues an administrative decision determining that a case is catastrophic in nature, the employer/insurer have 15 days to file a Form WC-R1 to appoint any Board-registered catastrophic supplier of their choice, OR 20 days to file an appeal. *Do not file an appeal and simultaneously file a Form WC-R1.* A recent Appellate Division decision upheld the principle that the *employer/insurer lose their right to appoint a supplier of their choice, once they appeal an administrative decision that the case is catastrophic in nature.* The Board may appoint any catastrophic supplier (the employee's choice or any other supplier) at its discretion.
13. *Catastrophic designation may not be forever.* It is believed that catastrophic designation based on the §34-9-200.1(g) 6 definition (employee is unable to work at jobs for which s/he is qualified due to injury and its residuals) may in the future be challenged, *if the employee becomes able to work.* For example, if an employee who lacked skills to return to suitable employment is retrained to obtain such skills, the employer/insurer could argue that the employee's injury is no longer causing an inability to work at suitable employment. In such a case, the *employer/insurer might request a hearing before an administrative law judge to prove change of condition from catastrophic to no longer catastrophic.* Remember that *rehabilitation is mandatory for employees whose injuries are designated as catastrophic in nature, and catastrophically injured employees are required to cooperate with rehabilitative efforts*, including efforts to return to suitable employment when return to work is feasible. If a judge finds that the employee is not cooperating, benefits may be suspended.